AMERICA AS THE DEFENDER OF NEUTRAL RIGHTS.

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To the historian of international law, the year 1915 will stand forth as marking a crisis in the development of the spirit of legality, similar in many respects to the crisis of the early years of the nineteenth century. It is too early to predict the condition in which our system of international law will emerge from the present conflict, but it is evident that this condition will depend in large part on the attitude and policy of America. It is no less clear that at the close of the present struggle the system of international law must be subjected to revision of a far-reaching character. The lack of harmony between the rules of international law and the conditions of modern warfare has been a source of constant irritation, and it is of great importance to the world's peace that these causes of irritation be removed.

Whatever may be the nature of these changes, it is evident that the pressing, immediate problem is to preserve the existing fabric of international law, and to await the termination of the war before any radical changes are undertaken. The civilized world, and particularly the neutral nations, look to America to assume the leadership in the performance of this world service. That the United States is called upon to play an important part in the performance of this service is attested by the contributions of this country to the development of international law during the nineteenth century. These contributions point the way to the larger rôle which we are now called upon to play.

We sometimes take for granted that there is an inherent and inevitable tendency of international law constantly to develop toward a higher and higher plane, and forget that there have been several periods in history during which the achievements of one epoch have been sacrificed by its successor. The shifting of the equilibrium of

power from the basin of the Mediterranean to northern Europe is probably the most striking illustration of the loss involved when belligerent interests find no countervailing force.

The situation which confronts us today marks another epoch in the development of international law. The issue is clearly and definitely formulated: shall the interests of belligerents reshape and determine the fabric of international law, or shall neutral interests become an increasingly dominant influence in establishing the rules that shall govern the relations between states?

Recent events in Europe have placed a new aspect on the part which America is called upon to play in the development of international law. The appeals of all the contending parties to accepted legal principles, as justification for their respective policies, is sufficient indication of a deeply-rooted respect for the "*opinion of mankind,*" which is, in the last analysis, the basis of the spirit of legality; both in municipal and in international law.

In spite of the constant appeals to established legal principles by all parties, there is noticeable a disquieting and dangerous tendency to encroach upon those neutral rights, the observance of which represents the results of a long and bitter struggle, marking one of the great achievements, if not the greatest achievement, of the nineteenth century. The broadening of the rights of neutrals has been accompanied by a corresponding development of neutral obligations. Viewed from the broadest possible standpoint, the development of neutral rights and obligations represents the most important step, first, in narrowing the area of conflict, and, secondly, in developing that world spirit of legality and settled rule which is the fundamental as well as the ultimate purpose of international law.

Under the guise of adapting the principles of international law to the new conditions of warfare, the policy pursued by the parties to the present conflict has not only undermined the basis of neutral rights, but threatens to destroy the hard-earned gains of the nineteenth century. We are apt to forget at times that the recognition of neutral rights is a matter of so recent development that it represents the least stable division of international law. It is becoming increasingly evident, furthermore, that the interests of advancing

civilization are so closely bound up with a broadening recognition of the rights of neutrals that the defense of the ground gained during the nineteenth century acquires a new significance and a new dignity.

It is this situation that places upon the republics of the American Continent a new and far-reaching obligation. Their defense of the rights of neutrals will be all the more effective if they are conscious of the fact that in making such defense they are at the same time furthering the higher interests of humanity. There is a noticeable tendency in the state documents issued by the parties to the present struggle, to take the view that while neutral rights are all very well in their way, they can only be recognized in so far as they do not interfere with the effective waging of war. It is this spirit which dominates the British proclamation of November 2, 1914, the German declaration of February 4, 1915, and the British Order in Council of March 15, 1915. In reading these documents one has the impression of being thrown back into an earlier and more primitive period. Even in language there is a striking similarity with some of the documents issued during the Napoleonic struggle. It requires little or no effort to understand the point of view which has dictated these documents, and one can not even repress a certain sympathetic understanding of measures which are undoubtedly intended either to safeguard fundamental national interests, or dictated by considerations which are believed to be necessary to national self-preservation. But it is also well to remember that Napoleon as well as the Allies were quite as sincere in 1807 as are the belligerents of 1916, and that had it not been for the "Armed Neutrality," on the one hand, and the influence of the United States, on the other, the last vestige of neutral rights would have disappeared, and with such disappearance civilization would have descended to a distinctly lower plane.

International as well as municipal law develops as a result of a compromise between conflicting interests, real or imaginary, and to allow any state or group of states in the society of nations to pursue a policy in flagrant disregard of the rights of third parties, is to destroy the basis of order, law and settled rule. It is this situation which places so heavy a responsibility on the republics of

the American Continent. By the inevitable logic of events they have become the only effective defenders of neutral rights, and unless they unitedly respond to the call they will become accomplices in the destruction of that delicate fabric of international law which represents the triumph of world interest over selfish national design, and which is the expression of the spirit of social order in international affairs.

The obligation assumes the character and dignity of a world duty, and can only be effectively performed through the united action of the American republics. It is true that the interests of the neutral nations of Europe are in many respects similar to our own, and there is every reason to hope and expect that they will support the united policy of the nations of the American continent. There is, however, much to be gained in giving to the principles which we are prepared to support a distinctive American background, and in emphasizing the fact that in the present crisis of the world's affairs the republics of America have not only become the special guardians and custodians of neutral rights, but are also prepared to fulfil with no less zeal, every neutral obligation. The world service which the republics of America are called upon to perform, through their united action, is of a two-fold character:

First. They must firmly and unitedly maintain those neutral rights which have received the sanction of long continued practice and observance, and

Second. They must be prepared to carry one step further the law relating to neutral rights and obligations.

As regards the first point, we cannot hope to make much progress unless it is possible firmly to establish the principle that belligerent convenience is no adequate basis for a system of international law and that, in fact, such a principle is destructive of all law.

The most notable advances in international law have been made because of the increasing importance of neutral interests and the compromises which belligerents have been compelled to make because of this fact. With each conflict there is evident a tendency on the part of belligerents to undermine, usually through forced and unnatural interpretation, the accepted principles of international

law, and it is only when this tendency is opposed by the definite and concerted assertion of neutral rights that the international legal structure is maintained. This situation makes the concerted assertion of neutral rights in the present crisis a matter of vital importance, in view of the manifest and natural tendency on the part of all belligerents to make belligerent convenience the sole and final test of legality.

At no time since the Napoleonic struggle has such an opportunity offered itself to the neutral countries of the civilized world. The republics of the American continent should lose no time in reaching a clear and definite agreement as to the rights which they are prepared to maintain. So strong has become the influence of world opinion on the action of individual states that such a concerted and united action would have a far-reaching effect in preserving the rights sanctioned by law and usage and, after the close of this conflict, in securing the recognition of new principles which, by reason of their influence in narrowing the area of conflict, are calculated to promote the broader interests of civilization. It would have been a splendid example of continental solidarity, if at the outbreak of the European war, the delegates of the republics of America had assembled and remained in permanent session for the maintenance of neutral rights, as well as to consider the scope and limits of their neutral obligations.

"What," it will be asked, "are the specific things for which such a league of neutrals should strive?"

It would involve too great an encroachment upon your time to take up, with any degree of detail, the specific rights which should be made the subject of concerted action. Such a discussion would, in reality, involve a commentary on the entire law of neutrality. The real point that I wish to make is that we should learn to think and act "continentally" on these great basic questions which affect so intimately the spirit of order and legality in international affairs. It is undoubtedly true that the modern conditions of maritime warfare call for a modification of certain of the accepted principles of international law, but if the extent and character of such modifications are to be determined exclusively by belligerent convenience,

we are certain to descend to a lower plane in the adjustment of international relations. It may well be that the Declaration of Paris requires revision, and that the Declaration of London no longer meets present needs, but in such revision the voice and influence of non-belligerents should be heard and given due weight. Probably the most pressing questions upon which neutral action is necessary are:

First. Shall we admit the right of belligerents indefinitely to extend the list of contraband articles, so that the distinction between absolute and conditional contraband practically disappears?

Second. Shall we accede to the rule that the doctrine of continuous voyage can under any circumstances be applied to conditional contraband?

Third. Shall we admit of the refining away of the distinction between a "naval or military base," and all the other ports of a country, so as practically to destroy the distinction?

Fourth. Shall we agree to a reëstablishment of the old rule of the Consolate del Mare, that enemy goods on board neutral vessels are liable to capture, even if such goods are not contraband of war?

Fifth. Shall we accede to the new definition of blockade, and to the penalties attached to the violation thereof?

Sixth. Shall we agree to the new interpretation placed on the "*right of search*"?

Seventh. Shall we tolerate the hovering of belligerent cruisers along the coast line of the republics of America.

Eighth. Serious consideration should also be given to the plan proposed by the Museo Social Argentine, which has aroused much discussion in the countries of South America. This important organization proposed, soon after the outbreak of the war, that steps should be taken by the republics of America to eliminate belligerent operations from American waters, and also to secure the freedom of all purely inter-American commerce, irrespective of the question whether such commerce was carried in neutral or belligerent bottoms. While this represents a most important extension of neutral rights, the recognition of such a principle would have avoided much unnecessary suffering inflicted on the American republics by reason of the European conflict.

These are all questions the mere formulation of which indicates how deeply they affect the structure of international law. In a period characterized by extreme retaliatory measures by all parties to the conflict, it is not likely that any real and permanent results can be secured in preserving the structure of international law unless the efforts receive united support.

It is also incumbent upon the republics of America to give due consideration to the question of neutral obligations. The unsatisfactory condition of the law in this respect has been illustrated time and again during the course of this war in the abuse of the hospitality of neutral ports to secure coal, supplies and provisions for belligerent squadrons. While the letter of the law has been complied with, its spirit has been constantly violated, and the question now presents itself with renewed insistence whether important modifications should not be introduced into the law regulating the obligations of neutrals in order effectively to guard against such abuses.

The outbreak of the European war came so unexpectedly, dealing such a severe blow to the economic and financial interests of all the republics of America, that the first period of bewilderment was followed by a period of anxious questioning with reference to their position as neutrals. The uncertainties and anxieties of the situation were increased by the presence of belligerent squadrons in the south Atlantic and south Pacific. The question of the interpretation of the rules relating to the shipment of supplies ostensibly shipped in pursuance of legitimate commercial transactions, but in reality intended for belligerent cruisers on the high seas, presented a problem so difficult and delicate that no one country could hope alone to grapple with the problem in a satisfactory way. Similarly the question of preventing the ports of America from becoming bases of operation was an exceedingly difficult one owing in part to the extended coast line, and partly to the inadequate facilities for patrolling the same. It was here that the opportunity presented itself to the republics of America to assume a real position of leadership in the preservation of international law.

When the war broke out all arrangements had been completed for the assembling of a Pan-American Conference in Santiago,

Chile, in October, 1914. The machinery was, therefore, ready for the holding of a Congress of neutrals which might have performed a great service in the more definite formulation of neutral rights and neutral obligations. The healthful restraint imposed on belligerents by reason of the presence of vigorous and united neutral interests has been lacking, and the result has been a marked and disquieting decline in the standards of international dealings.

Although the most effective moment for an united stand of the neutral nations of America would have been immediately after the outbreak of the European war, it is not too late to repair at least some of the damage that has been done. The machinery for such a conference is at hand in the International Commission of Jurists provided for by the Pan-American Conference of 1910. This body should be called immediately and remain in permanent session as a Congress of neutrals until the close of the war. Its deliberations and conclusions should have to do with the rights which the neutral nations of America are prepared to maintain, and the obligations which they are prepared to fulfill. The mere fact that such a Congress is in permanent session cannot help but impress itself upon the imagination of the entire civilized world, and have a far-reaching effect on the policy of the belligerent nations. Not only would such a Congress serve to preserve the spirit of legality, but it would give to the world an example of international solidarity which would mark an epoch in the history of international relations. To allow such an opportunity to slip by is to prove ourselves unworthy of the great mission entrusted to the free nations of America and to proclaim ourselves unable to defend the highest interests of civilization.